

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

BATTLE-ABC, LLC,

Plaintiff,

vs.

**SOLDIER SPORTS, LLC, and JEFFREY
EVANS,**

Defendants.

8:18CV508

**AMENDED
FINAL PROGRESSION ORDER**

This matter comes before the Court on the Joint Stipulated Motion to Extend Progression Order Deadlines ([Filing No. 67](#)). After review of the parties' motion, the Court finds good cause to grant the requested extensions. Accordingly,

IT IS ORDERED that the final progression order is as follows:

- 1) The jury trial and pretrial conference are cancelled and will be reset at a later date.
- 2) A telephonic conference to discuss the status of case progression and to schedule the trial and pretrial conference will be held with Magistrate Judge Michael D. Nelson on **February 21, 2020**, at **11:00 a.m.** by telephone. Counsel shall use the conferencing instructions assigned to this case by Judge Nelson to participate in the conference. ([Filing No. 64](#))
- 3) The deadline for completing written discovery under Rules 33, 34, and 36 of the Federal Rules of Civil Procedure is **October 29, 2019**. Motions to compel discovery under Rules 33, 34, and 36 must be filed by **November 12, 2019**.

Note: A motion to compel, to quash, or for a disputed protective order shall not be filed without first contacting the chambers of the undersigned magistrate judge to set a conference for discussing the parties' dispute.

- 4) The deadlines for complete expert disclosures¹ for all experts expected to testify at trial, (both retained experts, ([Fed. R. Civ. P. 26\(a\)\(2\)\(B\)](#)), and non-retained experts, ([Fed. R. Civ. P. 26\(a\)\(2\)\(C\)](#)), are:

Initial expert reports of each party in support of their claims or counterclaims shall be served by **December 6, 2019**, in opposition to such claims or counterclaims by **January 5, 2020**, and rebuttal reports in support of such claims or counterclaims by **January 19, 2020**.

¹ While treating medical and mental health care providers are generally not considered "specially retained experts," not all their opinions relate to the care and treatment of a patient. Their opinion testimony is limited to what is stated within their treatment documentation. As to each such expert, any opinions which are not stated within that expert's treatment records and reports must be separately and timely disclosed.

- 5) The deposition deadline is **February 19, 2020**.
 - A. The maximum number of depositions that may be taken by the plaintiffs as a group and the defendants as a group is 10.
 - B. Depositions will be limited by Rule 30(d)(1).
- 6) The deadline for filing motions to dismiss and motions for summary judgment is **April 10, 2020**.
- 7) The deadline for filing motions to exclude testimony on *Daubert* and related grounds is **March 25, 2020**.
- 8) The following procedure shall govern claim construction in this case:

Claim Construction Briefs:

The parties have filed their Claim Construction Briefs pursuant to the Court's prior order.

- A) By **September 24, 2019**, the parties shall jointly file a claim construction chart.
 - i.) Said chart shall have a column listing complete language of disputed claims with disputed terms in bold type and separate columns for each party's proposed construction of each disputed term. The chart shall also include a fourth column entitled "Court's Construction" and otherwise left blank. Additionally, the chart shall also direct the Court's attention to the patent and claim number(s) where the disputed term(s) appear(s).
 - ii) The parties may also include constructions for claim terms to which they have agreed. If the parties choose to include agreed constructions, each party's proposed construction columns shall state "[AGREED]" and the agreed construction shall be inserted in the "Court's Construction" column.
 - iii) The purpose of this claim construction chart is to assist the Court and the parties in tracking and resolving disputed terms. Accordingly, aside from the requirements set forth in this rule, the parties are afforded substantial latitude in the chart's format so that they may fashion a chart that most clearly and efficiently outlines the disputed terms and proposed constructions. Appendices to the Court's prior published and unpublished claim construction opinions may provide helpful guidelines for parties fashioning claim construction charts.

- 9) The Markman Hearing in this matter remains set for **October 4, 2019 at 9:00 a.m.** in Courtroom 2, Roman L. Hruska Federal Courthouse, 111 South 18th Plaza, Omaha, NE before Senior Judge Laurie Smith Camp.
- 10) All requests for changes of deadlines or settings established herein shall be directed to the undersigned magistrate judge, including all requests for changes of trial dates. Such requests will not be considered absent a showing of due diligence in the timely progression of this case and the recent development of circumstances, unanticipated prior to the filing of the motion, which require that additional time be allowed.

Dated this 9th day of September, 2019.

BY THE COURT:

s/ Michael D. Nelson
United States Magistrate Judge